

Before the
Federal Communications Commission

In the Matter of:

Public Safety and Homeland)	
Security Bureau Seeks Comment)	GN Docket No. 11-117
on Petition for Declaratory)	WC Docket No. 05-196
Ruling and/or Rulemaking Filed)	PS Docket No. 11-153
by Telecommunication)	PS Docket No. 10-255
Systems, Inc.)	

Reply Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Association of Late-Deafened Adults (ALDA)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Cerebral Palsy and Deaf Organization (CPADO)
California Coalition of Agencies Serving Deaf and
Hard of Hearing People (CCASDHH)
Rehabilitation Engineering Research Center on
Telecommunications Access (RERC-TA)

via electronic filing
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Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults (ALDA), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Cerebral Palsy and Deaf Organization (CPADO), California Coalition of Agencies Serving Deaf and Hard of Hearing People (CCASDHH), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA) respectfully submit these comments in reply to comments on the Public Safety and Homeland Security Bureau’s Public Notice seeking comment on the above-referenced petition (“*TCS Petition*”).¹ Consumer Groups seek to promote equal access to telecommunications for the more than 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind.

In addressing the *TCS Petition*, we urge the Commission to proceed carefully to avoid any adverse consequences to the Commission’s ongoing efforts to ensure that people with disabilities can access critical 911 services. Chairman Genachowski recently reported to Congress that “the nation’s 911 system has become an increasingly important component of our public safety infrastructure” and urged Congress to “promote . . . provisions to make [next generation] 911 fully accessible to people with disabilities.”² The Commission must ensure that any action it takes on the *TCS Petition* is consistent with and furthers the overarching goal of ensuring the availability of accessible emergency communications services for all Americans.

¹ Petition of Telecommunication Systems, Inc. for Declaratory Ruling and/or Rulemaking (June 24, 2012) (“*TCS Petition*”); Errata to *TCS Petition* (Aug. 8, 2012).

² *Legal and Regulatory Framework for Next Generation 911 Services*, Report to Congress and Recommendations, at 3, 4 (Feb. 22, 2013)

Bearing in mind that accessibility and public safety should remain top priorities, we share the *TCS Petition's* concern that unwarranted allegations of patent infringement could impede the implementation of the Commission's 911 policy.³ "Patent assertion entities" – colloquially known as "patent trolls" – should not be afforded the opportunity to shake down entities acting in good faith to implement critical public safety and accessibility initiatives backed by specific congressional and Commission action.

However, the *TCS Petition's* proposal that the Commission declare compliance with the Commission's 911 rules "by and for the United States" for the purposes of 28 U.S.C. § 1498 would do nothing to address the extortive behavior of patent trolls.⁴ Instead, it would simply substitute the government as the target of the extortion, allowing trolls to sue the United States in the Court of Federal Claims every time the Commission promulgates a new rule. Doing so would create a perverse disincentive for the government to address critical public safety and accessibility priorities by sensibly mandating the use of modern technology in areas covered by patents. Such a result would plainly disserve the public interest, and we urge the Commission to reject this misguided proposal.

Instead, we urge the Commission to investigate a solution that promotes or requires the license of compliance-essential patents on fair, reasonable, and non-discriminatory ("FRAND") terms to entities subject to the 911 rules.⁵ The *TCS Petition* and other commenters have explored the possible contours of such a

³ See *TCS Petition* at Summary.

⁴ See *id.* at 18-21.

⁵ See, e.g., *id.* at 21.

solution, and we encourage the Commission to solicit further comment to bring an FRAND framework into sharper relief.

Finally, whatever ultimate conclusion the Commission reaches, it must make clear that the patent system cannot be leveraged to permit patent trolls to unduly profit at the expense of important and congressionally recognized public safety and accessibility policy goals. Such a result would be plainly inconsistent with the constitutional mandate that the patent system serve the “progress of science and the useful arts” and the congressional mandate that the Commission “make available, so far as possible, to all the people of the United States, . . . communication service . . . for the purpose of promoting safety of life and property.”⁶ The Commission has a critical role in ensuring that the goals of public safety, accessibility, and intellectual property are reconciled in a sensible and constitutionally viable fashion, and we urge the Commission to remain focused on ensuring that people with disabilities can access emergency communications services on equal terms.

Respectfully submitted,

/s/

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⁶ See U.S. Const., Art. I, § 8, Cl. 8; 47 U.S.C. § 151.

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